CITATIONS TO OPINIONS BELOW

The unpublished orders whose review are sought are: first, of the United States Court of Appeals for the District of Columbia dated November 21, 2005, reproduced at (A-3);[1] second, of the Designated Panel dated October 14, 2005, reproduced at (A-5); and, third, of District Judge Richard Roberts reproduced at (A-16 & A-17).

STATEMENT OF JURISDICTION

The unpublished order of the United States Court of Appeals for the District of Columbia was entered on November 21, 2005 (A-3). The jurisdiction of this Court is invoked pursuant to 28 U.S.C. 1254(1).

STATEMENT REQUIRED BY RULE 29.4

The Court is informed that 28 U.S.C. § 2403 applies and this Petition has been served upon the Solicitor General of the United States and the Attorney General of the Commonwealth of Virginia.

FEDERAL AND VIRGINIA STATUTES INVOLVED

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[1]In the Appendix, "(A-)" references to opinions below; and, the "(B-)" references are to the laws involved.

STATEMENT OF THE CASE

The initial Complaint was filed by Petitioner Isidoro Rodriguez-Hazbun ("Isidoro-Son"), and Isidoro Rodriguez ("Rodriguez-Father") on January 27, 2003, pursuant to the terms of and Joint Custody Settlement Agreement ("Agreement"), and as authorized by VA Code § 20-146.25, .29, and .35 of the Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA"), Article 2, 11, 19, 20, 21, and 29 of the Hague Convention on the Civil Aspects of International Child Abduction, Oct. 25, 1980 ("Treaty"), 42 U.S.C. § 11601(a) & § 11602(1) and (7) of the International Child Abduction Remedies Act ("ICARA"); and Congressional Joint Concurrent Resolution 293 of May 23, 2000 (B- 9), *Isidoro Rodriguez, father and next of friend of Isidoro Rodriguez-Hazbun, and Isidoro Rodriguez-Hazbun v. National*

Center for Missing and Exploited Children et al., U.S.D.C. Dist. Ct., No. 03-0120 (Judge Richard W. Roberts), so to:

(a) obtain the prompt securing of Rodriguez-father's visitation rights in Virginia with Isidoro-Son pursuant to the Agreement,[2] by the issuance of a writ of mandamus to the United States Department of State, United States Department of Justice, and their independent contractor acting as an "instrumentality of government," the National Center for Missing & Exploited Children ("NCMEC"), its employees and attorneys ("Executive Branch");[3] and,

(b) to obtain damages against the employees, agents, and attorneys of said entities in accordance with either the Federal Tort Claims Act, or *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971), for their use of illegal policies and practices to

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[2]The Agreement (A-59), was entered on August 1, 1997, under the laws of the Republic of Colombia, Civil Code Title XII, Article 253 and Article 264, *Legis*, ed. 2002, wherein both parents retained visitation and residual parental rights for Isidoro-son. On August 26, 1997, a Colombian Court exercised its limited jurisdiction to reconfirmed these parental and visitation rights (A-57). No complaint was ever entered by the Colombian Courts to modify, amend or revoke these residual and visitation rights.

[3]The NCMEC is under a Cooperative Agreement has received more than $300 million in contracts, grants and awards from the Federal government since 1984, in part to provide the administrative process in the United States for any petition under the Treaty, including to secure international visitation rights under Art. 21, Chapter IV of the Treaty, and 42 U.S.C. § 11601(a). After this action was filed, in March 2004, the NCMEC sought and obtained inclusion under the Federal Tort Claims Act.

avoid compliance with the ICARA, the Treaty, and Virginia UCCJEA, causing the shanghaiing of Isidoro-Son from the U.S.A. to the Republic of Colombia on June 11, 2002.

However, disregarding the Complaint and various motions seeking the prompt securing of visitation by the Executive Branch, District Judge Richard W. Roberts refused to act as required by Articles 2 & 11 of the Treaty and Va Code § 20-146.29, and did other administrative acts demonstrating his lack of impartiality.

A Petition for a Writ of Mandamus was filed with the United States Court of Appeals for the District of Columbia in April 2003, Docket No. 03-5092. But n July 1, 2003, all the justices of the U.S. Court of Appeals for D.C., including Chief Justice John G. Roberts, refused to compel the Executive Branch to promptly secure visitation.(A-54 & A-55).

In response to the refusal of the Federal Court to comply with the Va Code and Treaty, an action was filed by Isidoro-Son on June 13, 2003, and by Isidoro-father on December 14, 2004, in the Fairfax J&D Court. However, here too the judiciary refused to comply with the statutory mandates (A-A-53 and A-53

Based on this record of the concealment of a felony in assisting the obstructing of Rodriguez-father's parental rights in violation of 18 U.S.C. § 1204, on March 7, 2005, a First Amended Complaint was filed to add claims under the civil Racketeer Influenced and Corrupt Practices Act ("RICO"), and added as defendants District Judge Richard W. Roberts and Judge T.S. Ellis, III, the justice of the U.S. Court of Appeals for the 4th & D.C. Cir., including Justice John G. Roberts, Chief Justice William Rehnquist as Cir. Justice of the 4th and D.C. Cir., and the judges of the

Virginia Courts, based on their acts outside of their limited jurisdiction under Art. 19 of the Treaty and 42 U.S.C. § 11603(d).

Then on March 31, 2005, after over two years not complying with VA Code 20-146.35, and Art. 2 and 11 of the Treaty, Defendant Judge Richard W. Roberts refused to disqualify himself as mandated by 28 U.S.C. § 455(b)(5)(i) & (iv), declared himself absolutely immune from the suit, and ruled that the mandamus action filed since January 27, 2003 under the Treaty and VA Code as moot, and dismissed the Complaint, and struck the First Amended Complaint.

A motion for TRO/Injunction and Writ of Mandamus to secure visitation for the Summer of 2005, and motion to disqualify, were filed on March 15. On April 6, 2005, a Notice of Appeal was filed with the Defendant Ct of Appeals for D.C., Docket No. 05-545.

On August 1, 2005, although Defendant Chief Justice William H. Rehnquist did comply 28 U.S.C. § 455(b)(5)(i) & (iv), § 291, & § 292 (b-3), he did not comply with 28 U.S.C. § 3 (B-3), by his allegedly rising from his death bed to handpick judges to be on the designate a panel deciding this action in lieu of defendant justices of the U.S. Court of Appeals for the D.C. Cir. Also on this date Justice John G. Roberts issued to the U.S. Senate a statement on the instant action (Exhibit B-12),[4] ,

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[4]Chief Justice John G. Roberts did intentionally conceal material facts regarding the Complaint and the First Amended Complaint. He intentionally described this litigation as being only about a father's lawsuit for custody, and not about the expeditious securing of visitation under the Art. 21 of the Treaty and VA Code § 20-146.25, and for compensatory and punitive damages under RICO, and *Bivens*, for unlawful acts in violation

and the Clerk's Office consolidated the Petition for TRO/Injunction and Writ of Mandamus, and order the filing out of time of the motion to dismiss the appeal based on the cynical argument that because Isidoro-son became 16 years old on March 10, 2005, the Executive Branch's duty under the Treaty no longer applied.

On October 14, 2005, the Designated Panel issued an order without permitting the filing of briefs–to summarily dismissed as moot the motion for TRO/Injunction and Writ of Mandamus, and the appeal. No consideration was given to rights under Va Code(A-5). On November 21, 2005, Defendant justices of the Court of Appeal denied a rehearing *En Banc* (A-3).

On October 28, 2005 U.S. Supreme Court Docket No. 05-545, was filed seeking a TRO/Injunction and Writ of Mandamus to secure visitation under the Va Code and Treaty for Christmas 2005. Sometime thereafter Defendant Chief Justice John G. Roberts disqualified himself pursuant to 28 USC § 455(b)((5)(i) & (iv), and pursuant to 28 U.S.C. § 3, to authorize Associate Justice Paul Stevens to act in his place. On December 7, 2005, Justice Stevens denied the TRO/Injunction, and on January 6, 2006, the full Court denied granting the writ of mandamus to compel compliance with the Va Code and Treaty.

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of parental rights under VA Code, the Treaty, 18 U.S.C. § 4, § 1001, § 1204. Also the Senate was not advised of the June 15, 2005, filing of Notice of Federal Tort Claims against Chief Justice Roberts for acts of negligent omission in furtherance of the obstructing of parental rights of Rodriguez-father since the Summer of 2003, in violation of 18 U.S.C. § 1204.

REASONS FOR GRANTING THE WRIT OF CERTIORARI

I. THE PETITION MUST BE GRANTED BECAUSE THE COURTS ARE WITHOUT JURISDICTION TO OBSTRUCT VALID PARENTAL RIGHTS UNDER THE AGREEMENT.

At the outset pursuant to Virginia's UCCJEA Va. Code § 20-146.4 (B-3),[5] and Articles 19 of the Treaty (B-5), and 42 U.S.C. § 11601(b)(4)(B-7), both the Federal and Virginia Courts have been authorized only limited jurisdiction to act promptly enforce the visitation rights under the Agreement (A-59), as confirmed by the Colombian Court (A-57).

But in the instant action, Judge R. Roberts and the Designated Panel disregarded these limits on their jurisdiction and judicial capacity by violating the jurisdictional limitations of VA Code § 20-146.4(A) & (B), Article 19 of the Treaty, 42 U.S.C. § 11601(b)(4), to hold that to grant visitation would by using Judge Ellis order (A-48 and A-10).[6]

They exceeded their jurisdiction and judicial capacity by striping Rodriguez-father of substantive right under the Agreement entered by the Colombian Courts (A-59 and A-60). VA "Code, the Treaty, and ICARA, clearly

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[5]Under this section the decision of the Colombian Courts shall be treated as if as if it were decision of a court of a state of the United States, and "must be recognized and enforced."

[6]"[if] angels were to govern men, neither external nor internal controls on government would be necessary." Federalist Paper No. 51, published Bill of Rights in U.S. Constitution.

state that Judge Ellis III decision to return of Isidoro-son to Colombia, "shall not be taken to be a determination on the merits" of Rodriguez-father's right to visitation.

In sum the U.S. Courts of Appeal for the District of Columbia Circuit (A-3), the Designated Panel (A-5), District Judge Richard W. Roberts (A-17 and A-18), District Judge Ellis III,[7] the Supreme Court of Virginia (A-53), the Court of Appeals of Virginia, Fairfax J&D Court Judge Thomas Mann (A-52), had no jurisdiction to deprive Rodriguez-father of his residual and visitation rights under the Agreement (A-59), that were to be secured under Va Code § 20-146.25, .29, and .35 (B-4), and Articles 21 of the Treaty (B-5), and 42 U.S.C. § 11601(a)(4)(B-6), *see* Congressional Concurrent Joint Resolution 293, May 23, 2000 (B-9).[8]

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[7] Additionally in *Escaf v. Rodriguez*, 200 F.Supp. 2d 603 (E.D. Va. 2002), Judge Ellis III, and Judge Richard W. Roberts in the instant action, acted outside of their judicial capacity in violation of 18 U.S.C. § 4 and § 371, by their conspiring to prevent a government official from performing his or her duty under the Treaty so to implement the illegal policies and practices of the Executive Branch disregarding the Congressional mandate of the concurrent jurisdiction of Fairfax County J&D Court under the Article 29 of the Treaty and VA Code § 20-146.1 *et seq.*; and, disregarding all the other exception under Article 13 and 20 of the Treaty, and rights under VA Code § 20-146.1 et seq.

[8] Under the Rules Enabling Act, 28 U.S.C. § 2072(b), both District Judges Ellis III and Richard W. Roberts, were prohibited by Congress from depriving Rodriguez-father and Isidoro-Son, of "any substantive right," i.e. their right to visitation, the right to the protection of the United States.

Consequently, the Defendant jurists respective orders surreally stripping Rodriguez-father of his parental rights of visitation under the Agreement (A-59), are illegal violation of 18 U.S.C. § 18 U.S.C. § 4, § 1001, § 1204,[9] (B-2), and well as 18 U.S.C. § 371, without legal effect and are void.[10]

II. THE PETITION FOR A TRO/INJUNCTION AND WRIT OF MANDAMUS TO COMPEL COMPLIANCE WITH VIRGINIA'S UCCJEA MUST BE GRANTED BECAUSE PETITIONERS' HAVE THE RIGHT TO SECURE VISITATION UNTIL ISIDORO-SON IS 18 YEARS OLD ON MARCH 10, 2007.

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[9]The Courts have held that 18 U.S.C. § 1204 criminalizes removal of a child from the United States "with intent to obstruct lawful exercise of parental rights" and would apply to obstruction of father's visitation rights. *In re Extradition of Schweidenback*, 3 F.Supp2d 118 (1998, DC Mass); 18 U.S.C. § 1204 applies to protection of visitation rights under State law which categorizes "visiting rights" as "parental rights," *United States v. Alahmad*, 211 F.3d 538, 2000 *Colo JCAR* 2472 (CA10 Colo., 2000). Even Judge Ellis III, recently held that the retention of a U.S. citizen child outside of the United States in violation of custody rights would be a violation of 18 U.S.C. § 1204, *United States v. Shahani-Jahromi*, 289 F.Supp2d 723 (ED Va, 2003).

[10]These duties to enforce the terms of the Agreement by the securing visitation could only be terminated if Rodriguez-father parental rights had been altered by a Colombian Court, if a new action had been filed to provide it jurisdiction under the Colombian Civil Code. This never occurred.

Pursuant to Virginia UCCJEA Va. Code § 20-146.1,[11] Rodriguez-father and Isidoro-Son's cause of action for access to the courts to secure visitation is that their rights are effective until Isidoro-Son's 18th birthday on March 10, 2007.[12]

However, the record below shows that in furtherance of a conspiracy in violation of 18 U.S.C. § 4, § 371, § 1001, and § 1204, as well as RICO, the illegal policies and practices the Executive Branch, Defendant jurists acted in collusion to disregard their judicial duties under the Supremacy Clause, Article VI, Clause 2, and the Fifth, Ninth, and Fourteenth Amendments to the Constitution, VA

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[11]VA Code § 20-146.1 Definitions. In this act: "Child" means individual who has not attained eighteen years of age.

[12]Access to justice is so fundamental that this Court has held that the Fourteenth Amendment includes, "the duty of every State to provide, in the administration of justice, for the redress of private wrongs." *Missouri Pacific Ry. Co. v. Humes*, 115 U.S. 512, 521 (1885). This Court has left no doubt that access to impartial court is a fundamental right guaranteed by the U.S. Constitution to secure rights under: (a) The First Amendment Petition Clause - *Bill Johnson's Restaurants, Inc. v. NLRB*, 461 U.S. 731, 741 (1983); (b) The Fifth Amendment Due Process Clause - *Walters v. National Assn. of Radiation Survivors*, 473 U.S. 305, 335 (1985); (c) The Fourteenth Amendment Equal Protection Clause - *Pennsylvania v. Finley*, 481 U.S. 551, 557 (1987); and, (d) The Fourteenth Amendment Due Process Clause - *Wolff v. McDonnell*, 418 U.S. 539, 576 (1974); *Terry E. Butera v. District of Columbia et al.*, 235 F.3d 637 (2001); *see* Christopher *v. Harbury*, 536 U.S. 403, Sct. 01-394 (2002).

Code § 20-146.1 *et seq.*, the Treaty, and ICARA, *see* Congressional Resolution 293 of March 2000.[13]

It is for this reason that, "[t]here is no crueler tyranny than that which is exercised under cover of law, and with the colors of justice ..."– *U.S. vs. Jannottie*, 673 F.2d 578, 614 (3d Cir. 1982).

For this reason although judges do enjoy a form of absolute immunity from suit, they do so only when the judge has jurisdiction over the subject matter and is performing a judicial act. *Forrester v. White*, 484 U.S. 219, 98 L.Ed. 2d 555.

Thus although these jurists may incur no criminal liability in neglecting to perform a mandatory duty imposed upon them by statute *see Braatelien v. United States* 147 F2d 888 (CA 8 ND), because 18 U.S.C. § 1204 makes it a crime to obstruct with the parental rights of a father the conspiracy to aid in the concealment of a felony is a violations of 18 U.S.C. § 4, § 371, and §1001, these jurist may be indicted and tried for the criminal offence without first being impeached and convicted by Congress, *see Claiborne v. United States*, 465 U.S. 1305, 79 L.Ed.2d 665.

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[13]When it was Isidoro-son when 13 year-old he requested that a petition to modify the Agreement (A-59), pursuant to Article 29 of the Treaty (B-6), and Va Code § 20-146.4(C)(B-4), based on his fundamental rights and "best interests" as a U.S. citizen, his preference to reside in Virginia with Rodriguez-father, and his concern for his safety because of the increasing violence in Colombia against U.S. citizens, *Isidoro Rodriguez-Hazbun v. Amalin Hazbun*, Fairfax County J&D Court (July 13, 2001, No. JJ347050-01-03).

Thus because this Court has held that even a minimal infringement upon Constitutional civil rights, constitutes irreparable injury sufficient to justify injunctive relief, *Elrod v. Burns*, 427 U.S. 347 (1976), and that judicial immunity does not extend to civil rights actions seeking prospective injunctive relief against judicial acts of state court judges. *Pulliam v. Allen*, 466 U.S. 522, 80 L.Ed. 2d 565; *Stephens v. Herring* (Ed Va) 827 F.Supp 359, the action to enforce visitation rights under VA Code § 20-146.25, is not moot.

III. BASED ON THE DOCTRINE OF *"EQUITABLY TOLLING,"* AND THE ACTS OF FRAUDULENT MALFEASANCE SINCE JANUARY 27, 2003, VIOLATING 18 U.S.C. § 4, § 371, § 1001, § 1204, THE PETITION FOR A TRO/INJUNCTION AND WRIT OF MANDAMUS TO COMPEL THE EXECUTIVE AND JUDICIAL BRANCH TO SECURE VISITATION PURSUANT TO THE TREATY AND ICARA, IS NOT MOOT AND MUST BE GRANTED.

From January 27, 2003 to July 14, 2005, the Executive Branch could not raise the defense that the timely filed action to secure visitation rights under the VA Code and Treaty was moot.

In this context, Courts have held that statute of limitations is an affirmative defense subject to waiver. *See*, e.g. *Nardi v. Stewart*, 354 F.3d 1134 (9th Cir. 2004)(the state waives its statute of limitation defense by filing a responsive pleading that fails to affirmatively set forth the defense); *Robinson v. Johnson*, 313 f.3rd 128, 137 (3rd Cir. 2002)(opinion on panel rehearing)(affirmative defenses such as statute of limitations must be raised at the earliest practicable moment.)

Disregarding the facts and law, and without any legal or factual justification, on August 1, 2005, the Designated Panel granted the filing out of time of the motion for summary affirmance seeking to dismiss the action for a TRO/Injunction and Writ of Mandamus filed in 2003, based on the argument that now that Isidoro-Son was 16 years-old, Rodriguez-father and Isidoro-Son's right of action under Article 4 of the Treaty was moot.[14] However, the Executive Branch did not challenge the cause of action under VA Code since Rodriguez-father and Isidoro-Son have a valid cause of action until March 10, 2007, when Isidoro-Son becomes 18 years-old.

Although the action TRO/Injunction and Writ of Mandamus was consolidated with the Appeal filed on May 25, 2005, the Designated Panel denied the right of filing of any brief ordered the appeal moot (A-6 and A-47).

This record confirms that from the commencement of this action when Isidoro-Son was but 13 years-old over three years ago on January 27, 2003, the Executive and Judicial Branches of Federal Government, as well as the Courts of Virginia intentionally violated 18 U.S.C. § 1204, so to conceal the obstructing with Rodriguez-father parental rights of visitation under the Treaty. The record confirms that these jurist permitted the filing of false responsive pleading by the Executive Branch in violation of 18 U.S.C. § 1001, in furtherance of a criminal conspiracy in violation of 18 U.S.C. § 4 and § 371.

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[14]Art. 4 states, "The Convention shall apply to any child who has habitually resided in a Contracting State immediately before any breach of custody or access rights. The Convention shall cease to apply when the child attains the age of 16 years."

Based on this extraordinary record the Executive Branch must be required to assist in the securing of visitation rights under Virginia's UCCJEA Va Code § 20-146.25-as it should have done under the Treaty.

Because limitations period are customarily subject to *equitable tolling* unless tolling would be inconsistent with the relevant statute, *Young v. United States*, 535 U.S. 43, 49 (2002).

Access to an impartial court, Chief Justice Marshall declared in *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 163 (1803), is,

> [T]he very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first duties of government is to afford that protection.

Due process in access to an impartial court consists of "**those fundamental principles of liberty and justice which lie at the base of all our civil and political institutions,**" *Hurtado v. California*, 110 U.S. 516, 535 (1884)(Emphasis added); *Ingraham v. Wright*, 430 U.S. 651, 673 (1977), quoting *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923).

The record here establishes that Rodriguez-father and Isidoro-son have been denied for at least the past three years access to an impartial judiciary to compel the Executive Branch to secure promptly their visitation rights under the Agreement, *see also*, 42 U.S.C. § 11602(7), pursuant to VA Code §§ 20-146.25, .29, and .35 and Articles 21 of the Treaty.

Therefore the Designated Panel's holding that the "time of the events underlying this petition has passed," is legal sophistry to assume away the delaying tactics of the Executive Branch and Judge Richard W. Roberts.[15]

Furthermore, the order denying Rehearing *En Banc*, is not only a violation of 28 U.S.C. § 455(b)(5)(i) & (iv), and § 291, but to confirms the pattern and practices of the United States Court of Appeals of the District of Columbia demonstrated in *Foretich v. United States,* Civ. Action No. 97-0929 (D.D.C. Jan 13, 2002), reversed on appeal, 351 F3d 1198 (D.C.C.A. No-02-5224, December 16, 2003),[16] to violate the civil rights of fathers by staying proceeding until a statute of limitation has run and to declare the action moot.

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[15]The impartiality of the Designated Panel is challenged under 28 U.S.C. § 455(a), because not only did defendant Chief Justice Rehnquist ignore 28 U.S.C. § 3, to obviously "handpicked" the judges on the Designated Panel to include: one who was under his direct control as Circuit Judge of the D.C. Circuit, one who had served as his law clerk, and married to the Defendant in *Foretich v. United States,* Civ. Action No. 97-0929 (D.D.C. Jan 13, 2002)(see discusion below), and one who was working very closely with the Defendant DOJ on anti-terrorist issues. Thus defendant Chief Justice Rehnquist is liable for his non-judicial acts in his administrative capacity, 46 AmJur 2d § 76, *see Mirles v. Waco*, 502 U.S. 9, 116 L.Ed. 2d 9; *Forrester v. White,* 484 U.S. 219, 98 L.Ed. 2d 555.

[16]In *Foretich id*, the courts delayed consideration of the merits of the father's claim filed in 1997, for over fourt years until 2001, when the minor child had reached her 18th birthday, and the father's rights ended. Given that one of the members of the Designated Panel is married to the wife in that action, his impartiality would be a concern to any objective observer.

Thus here too Judge Richard W. Roberts, the Designated Panel, and the Court of Appeals seek to close the courthouse doors based on asserting the issue of compliance with the VA Code & Treaty is moot, so to prevent Rodriguez-father and Isidoro-son from walking through them to claim the obstruction of Rodriguez-father's parental rights in violation of 18 U.S.C. § 4, § 371, § 1001, and 1204, since January 27, 2003

It is for this reason that the ongoing violation of ministerial and judicial duties, as well as illegal acts since January 27, 2003, that the Executive Branch's obligation to secure visitations under Article 21 of the Treaty has not run, although Isidoro-son became 16 years-old on March 10, 2005. The duty under the Treaty is tolled and remains in effect until Isidoro-son is 18 years old, to coincide with VA Code § 20-146.1, ,25 and .29.[17] As stated above, this Court has held that even a minimal infringement upon Constitutional civil rights, constitutes irreparable injury sufficient to justify injunctive relief, thus it must enjoin further illegal act the Executive and Judicial Branches of Government. *See Elrod v. Burns*, 427 U.S. 347 (1976).

IV. THE PETITION MUST BE GRANTED TO DECLARE AS INVALID THE ORDERS ISSUED IN DEFIANCE OF CONGRESS' MANDATE UNDER 28 U.S.C. § 455(b)(5)(i) & (iv).

Although there is no case law on the issue of malfeasance of office due to the obstructing of a father's

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[17] The Judge Richard W. Roberts, the Designated Panel, and the Court of Appeals for the District of Columbia Circuit disregarded the duty to secure Rodriguez-father's visitation right under VA Code § 20-146.1 & .25, until Isidoro-Son is 18 years-old

parental right in further of a criminal conspiracy to violating the right of access to an impartial court to petition the government regarding their illegal policies and practices to deny visitation rights under the Treaty and VA Code § 20-146.1 *et seq.*, it is clear from the wording of 18 U.S.C. § 4, § 371, § 1001, and § 1204, that compliance is not a prerogative of the courts under these criminal statutes.

Obviously by logic, as well as natural law, these jurists who allegedly are involved in these criminal acts are disqualified.[18]

Also pursuant to 28 U.S.C. § 455(b)(i) & (iv), these jurists who are defendant must be disqualified from consideration of this action, because when Congress amended § 455 in 1974 to create an objective standard for the recusal or disqualification of judges, Congress' intent was to "promote public confidence in the impartiality of the judicial process . . . " H.R. Rep. No. 93-1453, 1974 at 6355.

> Subsection (b) of the amended statute sets forth specific situations or circumstances ***when the judge must disqualify himself*** . . . by setting specific standards, Congress can eliminate the uncertainty and ambiguity arising from the language in existing

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[18]Disqualification of these jurists is mandated under the doctrines of *nemo judex in parte sua* and *audi alteram partem*, made applicable to federal judges under the Ninth Amendment. These principles of natural justice were derived from the Romans who believed that some legal principles were "natural" or self-evident and did not require a statutory basis. As such, they are indelibly imbedded in the common law and may not be disparaged by Constitutional actors without doing violence to the fundamental rights existing before the U.S. Constitution was ratified, and protected by the Ninth Amendment (B-1).

> statute and will have aided the judges in avoiding possible criticisms for failure to disqualify themselves. (Emphasis added) H.R. Rep. 93-1453, *supra.*

This was confirmed by even Chief Justice Rehnquist in discussing the import of 28 U.S.C. § 455(b), in his dissent, in *Lilyeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 871 (1988) that:

> Subsection (b) of § 455 sets forth more ***particularized situations in which a judge must disqualify himself.*** Congress intended the provisions of § 455 (b) to remove any doubt about recusal in cases where a judge's interest is too closely connected with the litigation to allow his participation.(Emphasis added)

Therefore the plain language of 28 U.S.C. 455(b)(5)(i) & (iv), clearly states that any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding when he is a party to the proceeding, or to his knowledge likely to be a material witness in the proceeding.

This force of the mandate of Congress for these jurists to disqualify themselves once named as a defendant is underscored by 28 U.S.C. §455(e) which states: "No justice, judge, or magistrate judge shall accept from the parties to the proceeding a waiver of any ground for disqualification enumerated in subsection (b)."

Clearly, Congress does not want justices hearing cases to which they are either a named defendant or will be a witness, since §455(a), states that, "[a]ny justice, . . . of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned."

Therefore, pursuant to congressional mandate, District Judge Richard W. Roberts, and the justice of the United States Court of Appeals for the District of Columbia, including newly confirmed Chief Justice John Roberts, had to disqualify themselves from the consideration of either the merits of the First Amended Complaint filed or the appeal because:

First, these jurists are named defendants, and will be called as witnesses, in "the proceeding" for their acts of malfeasance outside of their jurisdiction and judicial capacity by aiding the obstruction of Rodriguez-father's parental rights in violation of 18 U.S.C. § 4, § 371, § 1001, and § 1204.

Second, all of these jurists have been named Defendant in the Notice of Federal Tort Claim Act ("FTCA) filed on June 15, 2005.

Finally, this Court has addressed the issue of disqualification where many judges are involved in *United States v. Will*, 449 U.S. 200, 213 (1980). However, in the instant action none of the defendant jurists can invoke the *Rule of Necessity* because the factual predicate present in *Will* are not present, and 28 U.S.C. § 3, § 291, and § 292 apply, herein these jurists disqualified from a particular case by reason of § 455(b)(5)(i) & (iv), simply steps aside and allows the normal administrative processes of the court to assign the case to another judge not disqualified.

Thus, the record below confirms that both Chief Justices implemented their authority under 28 U.S.C. § 3, § 291, and § 292, to authorize the Designated, as well as to

authorize Associate Justice Paul Stevens to act.[19] Also defendant appellate jurists disqualified themselves.

Consequently, District Judge Richard W. Roberts was also required to disqualify himself pursuant to 28 U.S.C. § 455(b)(5)(i) & (iv). Because he refused to comply with the mandate, his order is *void*, and the entire case must be remanded for a full jury trial under RICO and *Bivnes,* and a bench trial under the FTCA, on the First Amended Complaint (and pending to be filed Second Amended Complaint to include the FTCA notice of June 15, 2005).

V. BASED ON THE 'VOID ORDER DOCTRINE," THE PETITION MUST BE GRANTED.

The Supreme Court has held that a void can be attacked in any proceeding where the judgment come into issue. *Pennoyer v. Neff,* 95 US 714 (1877); and, *Jordon v. Gilligan*, 500 F.2d 701, 710 (6th Cir. 1974)("a void judgment is no judgment at all and is without legal effect")(Emphases added).

A void judgment is not entitled to the respect accorded a valid adjudication. All proceedings founded on the void judgment are themselves regarded as invalid. A void judgment is regarded as a nullity, and the situation is the same as it would be if there were no judgment. 30A Am Jur Judgments §§ 43, 44, 45. It is attended by none of the consequences of a valid adjudication. It has no legal or binding force or efficacy for any purpose or at any place. It

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[19] In S. Ct. Docket No. 05-545, Justice Paul Stevens issued the orders in place of Chief Justice John G. Roberts, who is the 4th and DC Circuits Judge.

is not entitled to enforcement. All proceedings founded on the void judgment are themselves regarded as invalid. 30A Am Jur Judgments § 44, 45.

In the instant action, Judge R. Roberts and the Designated Panel disregarded the limits on their jurisdiction and judicial capacity by violating VA Code § 20-146.4(A) & (B), and Article 19 of the Treaty, to hold that to grant visitation would by using Judge Ellis order (A-48 and A-10). This exceeded their jurisdiction and judicial capacity because they striped Rodriguez-father of substantive right under the Agreement entered by the Colombian Courts (A-59 and A-60). Therefore these orders are void, or voidable, and can be attacked in this proceeding where their judgments come into issue. *Pennoyer v. Neff,* 95 US 714, 24 L ed 565 (1877); *Thompson v. Whitman,* 18 Wall 457, 21 l ED 897 (1873); *Jordon v. Gilligan,* 500 F.2d 701, 710 (6th Cir. 1974)(" a void judgment is no judgment at all and is without legal effect."); *Lubben v. Selective Service System Local Bd. No. 27,* 453 F.2d 645 (1st Cir. 1972).

The Supreme Court's void order doctrine provides that Rodriguez had and has a right to have void orders addressed and attacked in any proceeding in any court where the validity of the judgment comes into issue, because an illegal order is forever void. An order that exceeds the jurisdiction of the court, is void, or voidable, and can be attacked in any proceeding in any court where the validity of the judgment comes into issue. *see* Rose v. Himely, 4 Cranch 241, 2 L ed 608 (1808); *Windsor v. McVeigh,* 93 US 274, 23 L ed 914 (1876); *McDonald v. Mabee* 243 US 90, 37 Sct 343, 61 L ed 608 (1917).

The District Judge Richard W. Roberts and the Designated Panel's orders attempt to place a veil of legality on the acts obstructing the fundamental parental rights of

Rodriguez-father under the Agreement, as well as Isidoro-son fundamental rights as a U.S. citizen, by citing Judge Ellis III order is pure legal sophistry since in his order denied the existence of fundamental rights not by citing any case precedent, but instead citing the defendant U.S. State Departments comments. Surreally this in itself establish their violating meaningful access to an impartial courts by their acting outside their authority and violating 18 U.S.C. § 1204 and § 4, so to obfuscate the violations of Article 19 of the Treaty, and 42 U.S.C. § 11601(b)(4) for the past three years by Respondents' refusal to secure the rights of visitation under the Agreement, pursuant to the Article 21 of the Treaty and VA Code § 20-146.25 and .29.

Thus the orders are void.

Finally, at the core of the due process clause is the right to notice and a hearing "at a meaningful time and in a meaningful manner," *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965). "Ordinarily, due process of law requires an opportunity for "some kind of hearing" prior to the deprivation of a significant right. *Memphis Light, Gas & Water Div. v. Craft*, 346 U.S. 1, 19 (1978); *Boddie v. Connecticut*, 401 U.S. 371, 378-79 (1971).

Here there has been no hearing to consider either the VA Code or Treaty, in either Federal or State Courts, thereby violating Rodriguez-father's right to due process and equal protection of the laws in his substantive rights as a father under the Agreement.

Thus the orders must be reconsidered and set aside as being in excess of the judicial authority and capacity in violation of the above cited laws, *U.S. v. Holtzman*, 762 F.2d 720 (9th Cir. 1985).

CONCLUSION AND RELIEF SOUGHT

Since his being shanghaied to Colombia on June 11, 2002, by the illegal actions of the Executive Branch and Judicial Branches of Federal Government, and the Virginia Courts, acting outside of their jurisdiction, as well as judicial and ministerial capacity, Isidoro-son has been unlawfully deprived of his fundamental rights as a United States citizen. In addition for over three years Rodriguez-father and Isidoro-son have been illegally denied their right to visitation under the Treaty and VA Code by the on going malfeasance in office in violations of 18 U.S.C. § 4, § 371, and §1001, by aiding in the obstructing of Rodriguez-father parental rights in violation of 18 U.S.C. § 1204.

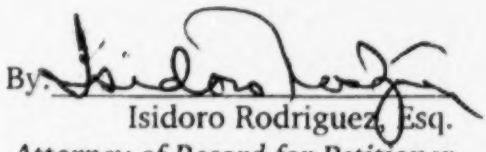
Yet these defendant jurists surreally declare these fundamental Constitutional and statutory issues moot, based on their judicial "rope-a-dope" for four and obfuscation! But neither the cause of action to compel compliance with the mandates of Congress and the General Assembly of Virginia, nor for depriving U.S. citizens of their rights due to acts of malfeasance in office are moot.

If these jurists are permitted to disregard the substantive rights of my son and I as citizens of the United States, as well rights under the Treaty, Federal and State Statute, with impunity and deny us the ability to challenge their actions, then they have unlimited power, and"[u]nlimited power is apt to corrupt the minds of those who possess it; and . . . , that where law ends, tyranny begins."Lord Chatham (William Pitt) to the British House of Lords in January 1770.

However, our Constitution created a limited government. Therefore, this Court must grant certiorari.

Dated: February 18, 2006

Respectfully submitted,

By: 

Isidoro Rodriguez, Esq.
Attorney of Record for Petitioner
Admission to the Bar of
The United States Supreme Court 1992

THE LAW OFFICES OF ISIDORO RODRIGUEZ
2304 Farrington Avenue
Alexandria, Virginia 22303-1520
Telephone: 703.960.0225

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

ISIDORO RODRIGUEZ, AND ISIDORO RODRIGUEZ-HAZBUN,

Petitioners,

vs.

UNITED STATES DEPARTMENT OF STATE, THE OFFICE OF CHILDREN ISSUES; UNITED STATES DEPARTMENT OF JUSTICE, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION; THE NATIONAL CENTER FOR MISSING AND EXPLOITED CHILDREN, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

APPENDIX

Isidoro Rodriguez, Esq.
Counsel for Petitioners
THE LAW OFFICES OF ISIDORO RODRIGUEZ
2304 Farrington Avenue
Alexandria, Virginia 22303-1520
(703)317-0526; E-mail: isidoro@earthlink.net

TABLE OF CONTENT OF APPENDIX

U.S. CONSTITUTION, TREATY, FEDERAL STATUTES/ REGULATION AND CODE OF VIRGINIA INVOLVED

The Hague Convention on the Civil Aspects of International Child Abduction, Oct. 25, 1980, T.I.A.S. No. 11,670, 19 I.L.M. 1501

The International Child Abduction Remedies Act

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

William K. Suter
Clerk of the Court
(202) 479-3011

January 9, 2006

Mr. Isidoro Rodriguez
2304 Farrington Avenue
Alexandria, VA 22303-1520

Re: In Re Isidoro Rodriguez
No. 05-545

Dear Mr. Rodriguez:

The Court today entered the following order in the above entitled case:

The petition for writ of mandamus is denied., The Chief Justice took no part in the consideration or decision of this petition.

Sincerely,

/s/_____
William K. Suter, Clerk

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

William K. Suter
Clerk of the Court
(202) 479-3011

December 7, 2005

Mr. Isidoro Rodriguez
2304 Farrington Avenue
Alexandria, VA 22303-1520

Re: In Re Isidoro Rodriguez, Applicant
Application No. 05A526

Dear Mr. Rodriguez:

The application for temporary restraining order/preliminary injunction in the above-entitled case has been presented to Justice Stevens, who on December 7, 205 denied the application.

This letter has been sent to those designated on the attached notification list

Sincerely,
William K. Suter, Clerk
by /s/_____
Troy D. Cahill
Staff Attorney

UNITED STATE COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 05-5130 September Term, 2005
O3cvOOl20
Filed on: Nov. 21, 2005)

In re: Isidoro Rodriguez and as father and next of friend of his 16 year old son Isidoro Rodriguez-Hazbun and Isidoro Rodriguez Hazbun,

Petitioners

Consolidated with 05-5202

ORDER

Appellants complaint filed in the district court on January 27, 2003, named all the sitting judges of this court as defendants. Accordingly, these cases were assigned to three judges from the United States Court of Appeals for the Federal Circuit, the Untied States Court of International Trade, and the United States District Court for the Northern District of Florida, sitting by designation. On October 28, 2005, appellants filed a petition for rehearing en banc in No. 05-5202, styled as a petition for designated panel's summary dismissal on October 14, 2005, of the appeal of the denial of visitation under a joint custody agreement, VA Code 20-146.1 et seq., statute, and the treaty, as well as the denial of damages," (sic) and a motion for recusal in No. 05-5202, styled "motion pursuant to 28 U.S.C. 455(a) and (b) to disqualify the judges of this Court of Appeals and judges of this circuit, the judges of the designated panel, and the judges of the 4th Circuit from consideration of the

petition for rehearing en banc of the designated panel's summary dismissal on October 14, 2005, of the appeal of the denial of visitation under a joint custody agreement, VA Code 20-146.1 et seq., Statute, and the Treaty, as well as the denial of damages, and for the appointment of an "impartial" special panel selected from outside this 4th Circuit." (sic) Upon consideration of appellants petition for rehearing en banc and motion for recusal, and there being no judges of this court available to constitute an en banc court, it is

ORDERED that the petition for rehearing en banc be dismissed as moot. It is

FURTHER ORDERED that the motion for recusal be dismissed as moot.

FOR THE COURT:
Mark J. Langer, Clerk
BY: /s/_____
Nancy G. Dunn

UNITED STATE COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 05-5130
September Term, 2005
O3cvOOl20

Filed on: (Seal-Oct. 14, 2005)

In re: Isidoro Rodriguez and as father and next of friend of his 16 year old son Isidoro Rodriguez-Hazbun and Isidoro Rodriguez Hazbun,

Petitioners,

Consolidated with 05-5202

BEFORE: Michel, Chief Judge,* Restani, Chief Judge,** and Stafford, Senior District Judge**

ORDER

Upon Consideration of (1) Rodriguez's petition in No. 05-5130 "for temporary restraining order or preliminary injunction and writ of mandamus;" (2) Rodriguez's motion for expedited consideration of the petition in No. 05-5130; (3) Rodriguez's motion in No. 05-5130 "to disqualify the judges of the court of appeals from these matters and for the appointment of a special panel selected from outside of the District of Columbia and Fourth Circuits;" and (4) certain private appellees' and the Virginia State appellees' motions in No. 05-5202 for summary affirmance, the responses to each of these motions if submitted, and the replies if submitted, it is

ORDERED that Rodriguez's petition for a temporary restraining order or preliminary injunction and writ of mandamus and his motion for expedited consideration thereof be, and hereby are, denied as moot because (1) the time of the events underlying his petition has passed; and (2) we reach the merits of whether the district court abused its discretion when it declined to issue a writ of mandamus in disposing of the motion for summary affirmance; and (3) expedited consideration has been granted. It is

FURTHER ORDERED that Rodriguez's motion for disqualification and "appointment" be, and hereby is, denied as moot because Chief Justice William H. Rehnquist[1] designated the judges of this special panel, each of whom sit outside of the U.S. Court of Appeals for the District of Columbia Circuit and the U.S. Court of Appeals for the Fourth Circuit, to hear and decide Rodriguez's appeal. It is

FURTHER ORDERED that the motions for summary affirmance be, and hereby are, granted for the reasons set forth in the accompanying memorandum. We conclude that briefing and oral argument would not assist the court in deciding Rodriguez's consolidated appeal. Additionally, summary disposition of this appeal is appropriate because on every issue, the merits are so clear as a matter of law that no substantial question regarding their proper disposition exists. See Tax Davers Watchdog. Inc. v. Stanley, 819 F.2d 294, 297(D.C. Cir. 1987) (per curiam).

Pursuant to D.C. Circuit Rule 36, this disposition will not be

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[1]Chief Justice Rehnquist died on September 3, 2005 after having served as Chief Justice of the United States since September 26, 1986.